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Happy New Year,

Al

The
CORPORATION JOURNAL

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JANUARY 1950

Contents

Recent Decisions

delaware corporations

Dissolved Delaware Corporations Status in Delaware and Other States

UNDER Section 39 of the Delaware Corporation Law, a Delaware corporation may be dissolved by its own act.

The corporation does not cease to exist, however, as soon as the statutory provisions governing dissolution have been observed. It may no longer carry on the business for which it was incorporated (Sec. 42), but it is continued for three years for the limited purpose of prosecuting and defending suits by or against it and to enable the corporation gradually to close and settle its business and to dispose of and convey its property and divide its capital stock. (Sec. 42.)

During these three years, the directors remain in charge of the corporate affairs as directors.[1] During that time, or even after its expiration, the Court of Chancery may, on application of any creditor or stockholder, either appoint the directors trustees or appoint one or more persons to be receivers for the company. (Sec. 43.)

At the expiration of the three years the corporation as such becomes extinct.[2] Trustees or a receiver appointed thereafter, or if appointed prior to that event, may continue active in the final settlement of the unfinished business of the corporation so long as the Chancellor deems necessary.[3] (Sec. 43.)

As to states other than Delaware, in which a Delaware corporation, dissolved under Section 39, may have been authorized to do business, the right to carry on the business for which the company was organized ceases when it has been dissolved in Delaware.[4] As in Delaware, however, the corporation may continue to project itself into other states for three years for the limited purpose of prosecuting and defending suits by or against it and settling its affairs.[5]

In a New York Federal court suit, one of the defendants was a Delaware corporation, qualified in New York, which had been voluntarily dissolved a year and a half before the suit was instituted. It was urged that the action had abated against the Delaware company three years after the date of the dissolution, which anniversary occurred prior to the time the action was brought to trial. It was ruled that the suit did not abate, either under the law as amended in 1941 or as it existed prior to the amendment.[6]

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[1] *Carle v. International Clay Products Co.*, 15 Del. Ch. 166, 132 Atl. 892.

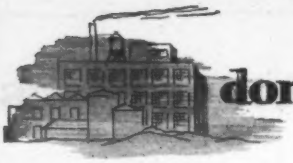
[2] *Harned v. Beacon Hill Realty Co.*, 9 Del. Ch. 411, 84 Atl. 229; *Lehrich v. Sixth Avenue Bancorporation, Inc., et al.*, 296 N. Y. S. 358.

[3] Sec. 43; *Harned v. Beacon Hill Realty Co.*, 9 Del. Ch. 411, 84 Atl. 229; *O'Brien v. King et al.*, 17 N. Y. S. 2d 44.

[4] *Fletcher, Cyclopedia Corporations*, Vol. 17, Sec. 8580; *Lehrich v. Sixth Avenue Bancorporation, Inc. et al.*, 296 N. Y. S. 358.

[5] *State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington*, 53 S. Ct. 624, 289, U. S. 361; *Kelly v. International Clay Products Co.*, 140 A. 143; *Lyman v. Knickerbocker Theatre Co.*, 5 F. 2d 638; *Eastman, Gardiner & Co. v. Warren*, 109 F. 2d 193.

[6] *Troustine v. Bauer, Pogue & Co., Inc. et al.*, 144 F. 2d 379; certiorari denied, 323 U. S. 777, 65 S. Ct. 190.



domestic corporations

DELAWARE

Chancery Court concludes a master would be appointed to hold an election, unless the parties could agree otherwise, where there were two factions of family owning stock.

Where a petition was filed under Section 31 of the General Corporation Law to review an election of directors and officers held in 1943, there having been none held since, and for the appointment of a master to hold an election, two factions of a family owning the stock being at odds, the Court of Chancery, New Castle County, ruled that a master would be appointed to hold an election unless the parties could agree otherwise.

The major portion of the decision was given over to a determination as to the actual ownership of the stock of the corporation and the extent of the rights of the reputed owners to vote the stock at the disputed election.

Mercer et al. v. Rockwell Oil Co. et al., 68 A. 2d 721. Albert Simon of Wilmington, for plaintiffs. Robert C. Barab of Wilmington and John A. Brown of Chicago, Illinois, for defendant Rockwell Oil Company. Caleb S. Layton of Richards, Layton & Finger of Wilmington, for individual defendants and counterclaimant.

Court of Chancery refuses to dismiss complaint relating to recapitalization plan, prior to final hearing, although plan was approved by stockholders, where temporary restraining order was withdrawn, since partial relief might subsequently be granted.

The principal question before the court was: "Can the court of Chancery retain a bill for an injunction to restrain the carrying out of a plan of recapitalization where the shareholders have voted in favor of said plan and a temporary restraining order has been withdrawn, thus permitting formal corporate action in furtherance of the said plan of recapitalization to take place under Section 26 of the General Corporation Law?"

The Court of Chancery, New Castle County, concluded that "the motion to dismiss the complaint on the ground that the defendant has or will effectuate the plan before final hearing cannot be granted," remarking:

"Defendant relies on cases in which the court has said that it will not grant relief where such action would be futile. Obviously, plaintiff's action was not futile when it was instituted, and while the defendant's failure to maintain the status quo may affect the remedy ultimately available to plaintiff in the event he is successful, that is not to say that the case

has become moot. I can readily visualize possible remedies which this court may supply plaintiff after final hearing if he sustains the charges contained in the complaint. Thus, it is possible that a mandatory injunction might give plaintiff part of the relief which he seeks."

Weinress v. Universal Laboratories, Inc. et al., 68 A 2d 925. Hugh M. Morris and Edwin D. Steel, Jr., of Morris, Steel, Nichols & Arsht of Wilmington, for plaintiff. Clair J. Killoran of Killoran & Van Brunt of Wilmington, for the defendant Universal Laboratories, Inc.

NEW JERSEY

Where corporation applied its annual net profits toward purchase of its bonds below face value, such gains held not to constitute a source for payment of preferred dividends.

Defendant New Jersey corporation, having outstanding Common Stock and also First Preferred and Second Preferred Stock, on which dividends were non-cumulative, had, during eight years, retained its earnings and used the funds for the purchase of its bonds below face value. Two questions raised were: "(a) whether the use of the annual net profits for the purchase of the bonds constituted such a utilization in the corporate business as would deprive the non-cumulative preferred stockholders of their inchoate right to dividends and (b) whether the preferential right of the non-cumulative preferred stock applies to the gains on the purchase of the bonds below face value." As to query "(a)", the Superior Court of New Jersey, Chancery Division, observed:

"Annual net earnings or surplus consisting of withheld annual net earnings may in the discretion of the directors be applied to legitimate corporate purposes such as payment of debts, reduction of deficits, capital improvements or extensions, and other ordinary business requirements, and to the extent that they are so used the inchoate right of non-cumulative preferred stockholders in such funds is lost or terminated. In this case, it was not within the normal operation of the business of the corporation to engage in the business of purchasing its own bonds at discounts. It would seem that the utilization of the earnings for such purpose, while an advantageous use of the corporate funds, is nevertheless not such a use as would deprive the preferred stockholders of their dividend rights in the funds so used. The capital surplus, as distinguished from the earned surplus, could be applied for the purchase of the company's bonds and the amount so used should be charged to that account, especially since I have concluded, as will hereafter be pointed out, that gains from such purchases are to be ratably shared among the stockholders as capital surplus."

As to the second query — whether the preferential right of the non-cumulative preferred stock applied to the gains on the purchase of the bonds below face value — the court concluded that "the gains resulting from the acquisition of bonds at a discount do not constitute a source for the payment of preferential dividends to the preferred stockholders, but are additions to capital surplus in which all of the stockholders have an equal right in any distribution of assets, as provided in the charter."

Dohme et al. v. Pacific Coast Co. et al., 68 A. 2d 491. Benjamin L. Walters, Jersey City (Joseph Nemerov, New York City, of counsel), for plaintiffs C. Louis Dohme and others. McGlynn, Weintraub & Stein, Newark, for plaintiff Nathan J. Susswein. O'Mara, Conway & Schumann, Jersey City, Edward J. O'Mara, Jersey City, for plaintiffs Kenneth T. Ralph and others. Stryker, Tams & Horner, Newark, Josiah Stryker, Newark, for defendant Pacific Coast Co. Milton, McNulty & Augelli, Jersey City, John Milton, Jr., Jersey City, for intervenors-defendants Arthur W. Wittig, Manson F. Backus and Fred M. Roberts.

foreign corporations

DISTRICT OF COLUMBIA

Where foreign non-profit corporation conducted its school in Maryland and listed its name in the Washington telephone directory, and advertised, maintained a bank account and purchased supplies in the District where principal and treasurer lived, such activities were ruled not sufficient to uphold service of process.

Defendant non-profit educational corporation moved to quash service upon it under circumstances where its activities in the District of Columbia were limited to advertising its school, conducted in Maryland, in a Washington newspaper, the maintenance of a checking account in a Washington bank, the purchasing of food, equipment and supplies from stores in Washington, some through personal visits but principally through telephone orders. The person who was principal of the school and president of its board of trustees, and his wife, the treasurer of the school, lived in Washington, where the principal sometimes received telephone calls from the school in Maryland. The school was listed in the Washington telephone directory. During the early part of the school year, out-of-town students were conducted on a sight-seeing tour of Washington.

The Municipal Court of Appeals for the District of Columbia affirmed the judgment of the Municipal Court, Civil Division, in granting defendant's motion to quash the service, concluding that defendant was not "doing business" in the District.

Lichtenberg v. Bullis School, Inc., * 68 A. 2d 586. I. H. Halpern of Washington, for appellant. Richard H. Mayfield (John E. Larson and Llewellyn C. Thomas, on the brief) of Washington, for appellee.

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* The full text of this opinion is printed in the **District of Columbia Tax Reporter**, page 311.

MICHIGAN

Where charter of Delaware corporation made preferred stock subject to redemption on a certain date, preferred stockholders objecting to subsequent merger with another corporation ruled not to have a vested right to have their stock redeemed.

Plaintiffs or their assignors were holders of preferred stock in a Delaware corporation authorized to do business in Michigan, where its sole business was the operation of a hotel in Muskegon. As part of a plan of reorganization approved by the stockholders in 1943, against which plaintiffs voted, a subsidiary Delaware corporation, wholly owned by the original or parent company, was created and consolidated with the parent, which assumed the liabilities and obligations of the merged company. Plaintiffs had sought redemption of their stock and payment of past due accumulated dividends in the Circuit Court for the County of Muskegon, which had rendered judgment for the corporation, and plaintiffs appealed.

The Supreme Court of Michigan noted that as the appellants had not complied with Sec. 61 of the Delaware Corporation Law within the time limited, they were not entitled to recover the value of their stock under that section. Nor, the court ruled, were they entitled to claim redemption under a clause of the articles of incorporation of the parent company which provided that "the preferred stock shall be subject to redemption at par on the 31st day of December, 1940," there being no vested right of the plaintiffs to have had their stock redeemed on that date. The court observed that to have redeemed plaintiffs' stock would have worked impairment of the corporation's capital and possibly an impairment of the rights of the then creditors. The court also said: "The quoted provision did not bind the corporation to redeem the stock on the date specified, as it would have been bound by a provision in the stock certificates that the 'preferred stock shall be redeemed at par' on a fixed date, or words to that effect."

The court also found against appellants' contentions alleging the merger was unfair, inequitable, unjust and fraudulent as to the preferred stockholders of the parent company, ruling there was no evidence of actual fraud or ground for relief on the theory of constructive fraud. Nor was the court able to accept appellants' contention that the merger agreement as to non-assenting preferred should be held to be against public policy and void because the subsidiary company had never been admitted to do business in Michigan, where it had never transacted any business. Also overruled was appellants' contention that the merger should be held void as to non-assenting preferred stockholders on the ground that it resulted in impairment of their rights guaranteed by Art. 1, Sec. 10 and the Fourteenth Amendment of the Federal Constitution. "It would seem," the court also remarked, "that plaintiffs' suits to have a large amount decreed them for redemption of stock and payment of dividends alleged to have accrued approximately six years prior to bringing suit would likewise be barred on the ground of laches, especially since the record shows that prior to hearing these cases there had been transfers of stock in the new corporation."

Dratz et al. v. Occidental Hotel Co., 39 N. W. 2d 341. Alexis J. Rogoski of Muskegon, for appellants. Sessions & Barlow of Muskegon for appellee.

NEW YORK

Sales approved in Ohio, solicited by local sales representatives, acting also for others, ruled not doing business so as to make seller subject to service of process.

Defendant Ohio corporation was successful in having the New York Supreme Court, Special Term, Part I, grant its motion to set aside service of process upon it, where it effected sales through an independent contractor, acting as its sales representative on a straight commission basis, not only for the defendant, but also for other concerns. All orders solicited were subject to acceptance and approval of the defendant at Ohio and the defendant did not maintain any office or bank account in New York.

Ustrac Exp. Corporation v. Metasco, Inc., New York Supreme Court, Special Term, Part I, October 10, 1949. Commerce Clearing House Court Decisions Requisition No. 417904.

Mere presence of foreign corporation's stockholders in state to close title to New Jersey real estate ruled not "doing business" to support service of process.

A motion to set aside service of process upon defendant New Jersey corporation was granted, under circumstances where it had stockholders within the state effecting the transfer of title to New Jersey real property. The New York Supreme Court, Special Term, Part I, concluded: "The presence of the stockholders in this state temporarily for the purpose of closing title to a piece of real estate located in New Jersey does not constitute doing business under the well settled authorities."

Rosenberg v. Poulon Realty Co. New York Supreme Court, Special Term, Part I, October 18, 1949. Commerce Clearing House Court Decisions. Requisition No. 419277.

PENNSYLVANIA

Unlicensed foreign corporation's transactions involving shipments of goods intended for its stores in Ohio which were routed through Pennsylvania, ruled not "doing business" so as to give rise to effective service of process upon it in Pennsylvania suit.

Service was made upon defendant unlicensed New York corporation, in a suit which it sought to have dismissed for lack of jurisdiction. Service was effected upon its president and its contacts with Pennsylvania were limited to the following activities: Its president was also its general manager who had charge of two companies owning stores operated in Ohio. He was also personally interested and active in the management of a Pennsylvania corporation operating a retail

store in Harrisburg, Pa. He spent about 30% of his time in New York, about 30% in Harrisburg and the balance in Ohio. The defendant corporation acted as buying agent for the two Ohio stores. The merchandise which was the subject of the suit was purchased for those stores. None of it was sold or intended for sale in Pennsylvania. The orders were placed by plaintiff's president with its sales agent in New York City. The goods were shipped f. o. b., Pittsfield, Mass., but were directed, by defendant's president, to Harrisburg, Pa., where they were inspected, priced, repacked and forwarded to the two Ohio stores. On one occasion, the president wrote on defendant's stationery, giving a Harrisburg, Pennsylvania, address.

The Court of Common Pleas, Dauphin County, ruled that defendant corporation was not amenable to process to enforce a personal liability under these circumstances.

Ken-Whitmore, Inc. v. Donen Stores, Inc.,* Court of Common Pleas, Dauphin County, May 2, 1949. Douglas & Handler, for plaintiff. David S. Cohen, for defendant. Commerce Clearing House Court Decisions Requisition No. 417577; 68 D. & C. Rep. 401.

*The full text of this opinion is printed in the **State Tax Reporter,** Pennsylvania, page 10,568.

TEXAS

Foreign corporation, attempting to sue to recover in tort action, ruled required to show it had complied with statute by qualifying prior to time tort was committed.

Art. 1536, V. A. C. S., denies to any foreign corporation transacting intrastate business in Texas the right to maintain any suit in any court of the state, whether arising out of contract or tort, unless at the time such contract was made or tort committed, such corporation had filed its articles of incorporation with the Secretary of State in order to obtain a permit to transact business.

Plaintiff below, a New Mexico corporation, seeking to recover for damages alleged to have occurred while plaintiff's goods were stored in defendants' custody, failed to show whether the damage occurred before or after the date it was authorized to do business in Texas. The Civil Court of Appeals, El Paso, affirmed a judgment dismissing plaintiff's suit without prejudice. The court expressed the view that, under the statute and authorities, it was "clear that as a pre-requisite to the maintenance of its suit it was incumbent upon plaintiff to show that it had complied with the statute when the tort for which it sought to recover was committed after it had complied with the statute."

Abdou et al. v. Sunny State Distributing Co., 223 S. W. 2d 341. Potash & Cameron, H. L. McCune, Sr., of El Paso, for appellants. Isaacks & Galatzan, Gowan Jones, of El Paso, for appellee.


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taxation

ARKANSAS

Municipal taxes on radio broadcasting upheld.

This suit involved the validity of occupation taxes, levied by Ordinance No. 7573 of the City of Little Rock, Arkansas. The appellees, a partnership owning radio station KGHI and a corporation owning station KARK, brought suit to enjoin the City Collector from enforcing the ordinance, upon the theory that the taxes were an unconstitutional burden on interstate commerce. The Chancellor sustained this contention.

The ordinance levied an annual occupation tax of $250 upon persons who either (a) carried on the business of producing or generating electro-magnetic waves for the purpose of broadcasting by radio transmission or (b) engaged in the business of intrastate radio broadcasting. The law recited that it should not apply to that portion of the business that might be interstate or foreign commerce, or to business done for the Government of the United States. There was also levied an annual tax of $50 upon the business of soliciting radio advertising within the city, with the same exemption of interstate, foreign and Government business.

The Arkansas Supreme Court reversed the ruling of the Chancellor and upheld the tax, answering appellees' argument that interstate commerce was being burdened by pointing to the language of the ordinance, which attempted only to tax local activities, expressly exempting fortuitous interstate aspects of the transactions.

*Beard, Collector v. Vinsonhaler,** 90 Ark. 262. T. J. Gentry, for appellant. Bailey & Warren and Bruce T. Bullion, for appellee. *(Appeal filed in the Supreme Court of the United States, September 20, 1949; Docket No. 342. Appeal dismissed for want of a substantial Federal question, November 7, 1949.)*

*The full text of this opinion is printed in the **State Tax Reporter**, Arkansas, page 7553.

CONNECTICUT

Federal District Court rules business corporation franchise income tax not applicable to qualified foreign trucking corporation engaged in interstate commerce.

The United States District Court, District of Connecticut, has held that a foreign interstate motor truck freight carrier corporation, which was qualified to do business in Connecticut but not registered with the Public Utilities Commission of that state, engaged solely in interstate commerce with respect to Connecticut, was not subject to the state business corporation franchise tax, based on net income allocated to the state. *(Spector Motor*

Service, Inc. v. McLaughlin, decided October 18, 1949.) This represents the second decision by this court to the same effect. The prior decision of December 21, 1942, reported at 47 F. Supp. 671, (The Corporation Journal, April, 1943, page 378), was reversed by the Court of Appeals, Second Circuit, reported at 139 F. 2d 809, (The Corporation Journal, March, 1944, page 128). When taken to the Supreme Court of the United States, that court directed a ruling of the highest court of Connecticut was to be secured before it would review the litigation. (65 S. Ct. 152, 323 U. S. 101—The Corporation Journal, January, 1945, page 268.)

Connecticut's highest court, the Supreme Court of Errors, rendered a declaratory judgment on July 21, 1948, sustaining the tax so far as the State Constitution and State legislation were concerned, and left the question of possible violation of the Federal Constitution to be resolved by the Federal courts. (135 Conn. 37, 61 A. 2d 89; The Corporation Journal, November, 1948, page 215.) The original trial court, first mentioned above, has now denied a motion to dissolve an injunction it had granted to enjoin collection of the tax, expressing the view that a majority of the present Supreme Court would hold the tax in violation of the Commerce Clause, when the litigation again reaches that court.

*Spector Motor Service, Inc. v. McLaughlin,** United States District Court, District of Connecticut, October 18, 1949. Day, Berry & Howard of Hartford, for plaintiff. Frank Flood, Assistant Attorney General, for defendant. Commerce Clearing House Court Decisions Requisition No. 418537.

*The full text of this opinion is printed in the **State Tax Reporter**, Connecticut, page 289-40.

MISSOURI

Market value of stocks of two foreign subsidiary corporations, not engaged in business in Missouri, owned by taxpayer Missouri company, ruled not to be assigned to Missouri as "property and assets employed" in that state, in determining proportion of outstanding shares and surplus employed in Missouri for franchise tax purposes.

This action was instituted by a Missouri corporation against the Director of Revenue for an injunction against the collection of the corporation franchise tax, which the corporation had been successful in obtaining in the county court.

The corporation, a respondent upon appeal by the Director of Revenue to the Supreme Court of Missouri, Division No. 1, owned the shares of two subsidiary Illinois corporations which were not engaged in business in Missouri. None of the property or assets of either of these Illinois corporations, represented by the shares of stock owned by the respondent, was located or employed in Missouri during the periods in question. In computing the tax due from respondent, the Missouri Tax Commission considered the market value of such stocks as a part of the franchise tax base. Respondent refused the payment of that portion of the tax so computed, which was attributable solely to the inclusion of the market

value of such shares of stock, but it paid the balance of the tax due. The pertinent statute provided that where a part of a corporate taxpayer's outstanding shares were employed in another state or country, the franchise tax rate was to be applied to "its outstanding shares and surplus *employed* in this state, and *for the purpose of this Act* such corporation *shall be deemed to have employed in this state* that proportion of its entire outstanding shares and surplus that its *property and assets in this state* bears to all its property and assets wherever located." (Italics are the court's.) Appellant contended the shares in the two foreign corporations were "property and assets" in Missouri and that the shares were to be considered to be located at the domicile of the owner in Missouri. Respondent insisted that the funds invested in the shares of the stock of the foreign corporations were not "employed in business" in Missouri.

The Supreme Court of Missouri remarked: "Of course there can be no doubt that corporate shares of stock issued by a foreign corporation and owned by a domestic corporation in this state are 'property and assets' of such domestic corporation, but the question here is the *location* and employment of such property." The court noted, in passing that, under similar conditions, the New York courts have held that the corporation owning the stock "employed no part of its capital" in that state, and that the courts of Missouri had not previously considered the exact proposition presented. The court concluded:

"Reading and considering the Statute as a whole and giving effect to its several provisions, we must hold that the respondent does in fact employ a part of its outstanding shares in business in another state; that the amount evidenced by the market value of the shares of stock held in the two Illinois corporations 'is not property and assets in this state,' nor are such shares of stock 'property and assets in this state' within the meaning of those words as used in the statute; that such property and assets were not 'employed in this state'; and that the market value of such shares of stock should not have been included in the tax base for computing the amount of respondent's corporation franchise tax for said years."

Union Electric Co. v. Morris et al., *222 S. W. 2d 767. J. E. Taylor, Attorney General, and Will F. Berry, Jr., Asst. Atty. General, for appellants. Robert J. Keefe, William H. Ferrell and Igoe, Carroll, Keefe & Coburn of St. Louis, for respondents.

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*The full text of this opinion is printed in the **State Tax Reporter**, Missouri, page 817, and in **State Tax Cases Reporter**, page 15,221.

WISCONSIN

Personal property stored on assessment date in commercial storage warehouse, three months before act exempting property so stored became effective, ruled subject to taxation.

Personal property owned by the plaintiff of the value of $7,600 was shipped into Wisconsin and stored in its original package prior to and on May 1, and thereafter, in a commercial storage warehouse in the City of Milwaukee; but the property was not shipped and stored for transshipment, so as to be exempt under Chapter 63, Laws of 1949, which became effective April 30,

1949. This Chapter provided for the exemption of property so stored for transshipment.

Plaintiff contended that the property should have been regarded as exempt under Chapter 567, Laws of 1949, which became effective after the official publication thereof on July 30, 1949. This Chapter repealed and recreated Section 70.111(10) Wis. Stats., as created by Chapter 63, so as to read: "Merchandise shipped into this state and placed in storage in the original package in a commercial storage warehouse or on a public wharf shall while so in storage be considered in transit and not subject to taxation, but no portion of a premises owned or leased by a consignor or consignee shall be deemed to be a public warehouse despite any licensing as such." In effect, plaintiff urged that the later enactment be given a retroactive effect so as to include within its scope the property owned by plaintiff on May 1, the date as of which property is assessed in Wisconsin.

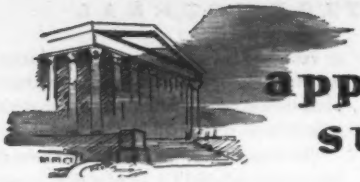
The Supreme Court of Wisconsin ruled that plaintiff's contentions could not be sustained, finding no legislative sanction for the interpretation sought by plaintiff.

*Northern Supply Co. v. City of Milwaukee,** 39 N. W. 2d 379. Whyte, Hirschboeck & Minahan and Albert B. Houghton of Milwaukee, for plaintiff. Walter J. Mattison, City Attorney, Milwaukee, John J. Dolan, First Assistant City Attorney, Milwaukee, and Harry Slater, Assistant City Attorney, for defendant.

*The full text of this opinion is printed in the **State Tax Reporter,** Wisconsin, page 2544.

state legislation

Eleven State Legislatures are scheduled to meet in regular session in 1950. These are California (Budget session), Kentucky, Louisiana, Massachusetts, Maryland (Budgetary session), Mississippi, New Jersey, New York, Rhode Island, South Carolina and Virginia.



appealed to the supreme court

*The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.**

OCTOBER 1949 TERM

ARKANSAS. Docket No. 342. *Beard, Collector v. Vinsonhaler,* 90 Ark. 262. (The Corporation Journal, January, 1950, page 72.) Municipal taxation—privilege taxes on radio broadcasting. **Appeal filed September 20, 1949. November 7, 1949:** *"Per curiam:* The appeal is dismissed for want of a substantial federal question. *Crutcher v. Kentucky,* 141 U. S. 47. Mr. Justice Douglas took no part in the consideration or decision of this case." (70 S. Ct. 146.) **Rehearing denied, December 5, 1949.**

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* Data compiled from **CCH U. S. Supreme Court Bulletin, 1949-1950.**

The scope of the Philadelphia income tax has been enlarged to reach, among other things, the net income of corporations derived from sources in Philadelphia, received since January 1, 1949. The first annual return of taxable corporate income will be due on or before March 15, 1950, or within 75 days from the end of the fiscal year. The rate of the tax, payable in 1950 and thereafter, has been increased to 1¼%.

It is expected that a Government Proclamation will be issued in the near future at Ottawa, Canada, which will have the effect of making judgments of the Supreme Court of Canada final judgments in all cases involving Canadian law. Heretofore, the Judicial Committee of the Privy Council at London, England, has been the final court of review on appeals from the judgments of the Supreme Court of Canada. The Proclamation will abolish such appeals.

regulations and rulings

Alabama—County and municipal property taxes should not be collected from a garment manufacturing company which was granted a five-year exemption. The expression, "to remit the taxes," properly means to refrain from exacting or enforcing. (Attorney General's Opinion to Coffee County Tax Collector, State Tax Reporter, Alabama, ¶ 20-210.)

A nonresident vendor who collects the Alabama use tax from his customers is required to have a certificate from purchasers of property delivered into Alabama. (Letter of Department of Revenue, State Tax Reporter, Alabama, ¶ 68-025.)

Connecticut—The term "gross receipts" of motor bus corporations includes all income from the highway use of passenger busses such as fares, rental and charter income, and receipts for express delivery of packages incidental to carrying passengers for hire and income from realty used in the conduct of the business. Income from realty not used in the conduct of the business is subject either to the Corporation Business Tax or to the Unincorporated Business Tax. The Motor Bus Company Tax does not apply to taxicabs. (Opinion of the Attorney General, State Tax Reporter, Connecticut, ¶ 84-002.)

Louisiana—A company maintaining an office in a city, where orders are taken and transmitted to a regional office for filing and the merchandise ordered therein returned to the original office, after which the customer calls and picks up his merchandise, is liable for municipal occupation tax in the city where the orders were taken and the merchandise delivered to the customer. (Opinion of the Attorney General, State Tax Reporter, Louisiana, ¶ 30-023.)

It should be an administrative policy to consider cooperatives as legal entities apart from their members, unless proof is produced to the contrary, and where associations are not listed as exempt self-users, business license taxes should be collected. (Opinion of the Attorney General, State Tax Reporter, Louisiana, ¶ 32-132.)

A claim for refund of initial taxes must be received within one year from the date of payment. (Opinion of the Attorney General to Commissioner of Finance and Taxation, State Tax Reporter, Tennessee, ¶ .322.)

Minnesota—The 5% surtax imposed on the income tax rates of corporations, banks and individuals is not subject to reduction by regular allowable credits. The $5 annual tax imposed on all individuals is a flat rate sum and is not dependent upon any deductions, credits or rates of taxation such as apply in the computation of the taxes upon net taxable income under other provisions. (Opinion of the Attorney General, State Tax Reporter, Minnesota, ¶ 13-006.)

some important matters

for January and February

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama—Annual Application for Permit to do Business due on or before February 1.—Domestic and Foreign Corporations.

Report of Resident Stockholders and Bondholders due on or before February 1.—Domestic and Foreign Corporations.

Alaska—Annual Report due within 60 days from January 1.—Domestic and Foreign Corporations.

Returns of Tax Withheld at the source due on or before January 31.—Domestic and Foreign Corporations.

Arkansas—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

California—Quarterly Retail Sales Tax Return and Payment due on or before January 31.—Domestic and Foreign Corporations.

Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

Colorado—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Connecticut—Quarterly Retail Sales Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.

Annual Report due on or before February 15 (if corporation was organized or qualified between January 1 and June 30 of any previous year).—Domestic and Foreign Corporations.

Delaware—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

District of Columbia—Annual Report due between January 1 and January 20.—Domestic Corporations.

Returns of Information at the source due on or before February 15. Domestic and Foreign Corporations.

Dominion of Canada—Returns of Information at the source due on or before February 28.—Domestic and Foreign Corporations.

Illinois—Annual Report due between January 15 and February 28.—Domestic and Foreign Corporations.

Indiana—Gross Income Tax Return and Payment due on or before January 31.—Domestic and Foreign Corporations.

Returns of Information and Returns of Withholding at the source due on or before January 31.—Domestic and Foreign Corporations.

Iowa—Quarterly Retail Sales Tax Returns and Payment due on or before January 20.—Domestic and Foreign Corporations.

Kansas—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Kentucky—Returns of Withholding at the source due on or before January 31.—Domestic and Foreign Corporations.

Louisiana—Annual Report due on or before February 1.—Domestic Corporations.

Capital Stock Statement due on or before March 1.—Foreign Corporations.

Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Maine—Annual License Fee due on or before March 1.—Foreign Corporations.

Maryland—Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

Massachusetts—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Minnesota—Annual Report due between January 1 and April 1.—Foreign Corporations.

Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Missouri—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

Montana—Annual Report of Capital employed due between January 1 and March 1.—Foreign Corporations qualified after February 27, 1915.

Annual Report due on or before March 1.—Domestic and Foreign Corporations.

Annual Return of Net Income due on or before March 31.—Domestic and Foreign Corporations.

New York—Annual Franchise Tax Report and Tax of Real Estate Corporations due between January 1 and March 1.—Domestic and Foreign Real Estate Corporations. Form 42 CT, Art. 9 of the Tax Law.

Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

North Dakota—Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

Ohio—Report to Department of Industrial Relations due on or before February 1.—Domestic and Foreign Corporations employing three or more persons in Ohio.

Retail Sales Tax Return and Vendors' Excise Tax due on or before January 31.—Domestic and Foreign Corporations.

Annual Franchise Tax Reports due between January 1 and March 31. —Domestic and Foreign Corporations.

Oklahoma—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Oregon—Returns of Information at the source due on or before February 15. —Domestic and Foreign Corporations.

Returns of Withholding at the source due on or before January 30.— —Domestic and Foreign Corporations.

Pennsylvania—Report of Unclaimed Dividends, Credits, etc., due in January. —Domestic Corporations.

Rhode Island—Annual Report due during February.—Domestic and foreign Corporations.

South Carolina—Annual Statement due on or before January 31.—Foreign Corporations.

Annual License Tax Return due during February.—Domestic and Foreign Corporations.

South Dakota—Annual Capital Stock Report due before March 1.—Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

Texas—Annual Franchise Tax Report due between January 1 and March 15. —Domestic and Foreign Corporations.

United States—Withholding at source due on or before January 31.— Domestic and Foreign Corporations.

Returns of Information at the source due on or before February 15.— Domestic and Foreign Corporations.

Utah—Returns of Information at the source due on or before February 15.— Domestic and Foreign Corporations.

Vermont—Returns of Information at the source due on or before February 15. —Domestic and Foreign Corporations.

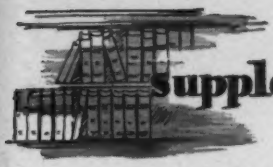
Annual Report due on or before March 1.—Domestic Corporations.

Virginia—Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before February 15.— Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1.—Domestic Corporations.

West Virginia—Annual Business and Occupation (Gross Sales) Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.



supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Delaware Corporations (1949 Edition). Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Some Contracts Have False Teeth. Interesting case-histories showing advisability of contractor getting lawyer's advice before undertaking construction work outside home state, even for federal government.

What Constitutes Doing Business. (Revised to March 1, 1948.) A 187-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

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More Sales with Spot Stocks. Advantages found by many manufacturers in carrying spot stocks at strategic shipping points—and preliminary statutory measures necessary to protect corporate status.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

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After the Agent for Service Is Gone. What will happen *then* if suit is brought against the company? Some examples taken from actual court cases, with full texts of the final decisions.

We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

Judgment by Default. Gives the gist of Rarden v. Baker and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.